

**Corporate Overview and Scrutiny
Management Board**

13 February 2019



**Report on the Council's use of powers
under the Regulation of Investigatory
Powers Act 2000 - Quarter 3 - 2018/2019**

Report of Helen Lynch, Head of Legal and Democratic Services

Purpose of the Report

- 1 To inform members about the Council's use of powers under the Regulation of Investigatory Powers Act 2000 ('RIPA') during the period 1 October 2018 until December 2018 (Quarter 3) to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose.

Executive summary

- 2 Durham County Council in exercising use of powers under RIPA during Quarter 3 (Q3) were authorised to carry out one Covert Human Intelligence Surveillance (CHIS) and two Directed Surveillance operations.

One application for Directed Surveillance was refused by the Magistrates Court. Further details about the reasons for refusal and the subsequent review of the application by the Senior Responsible Officer are set out in the report.

- 3 The Council's Senior Responsible Officer is satisfied that the Council's use of its powers under RIPA during Q3 is consistent with the Council's policy and that the policy remains fit for purpose.

Recommendation

- 4 It is recommended that members receive the quarterly report on the Council's use of RIPA for the period 1 October 2018 until 30 December 2018 and resolve that it is being used consistently with the Council's policy and that the policy remains fit for purpose.

Background

5. The Regulation of Investigatory Powers Act 2000 (RIPA) enables local authorities to carry out certain types of surveillance activity provided that specified procedures are followed.
6. Directed surveillance is covert surveillance that is not intrusive and is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under the 2000 Act);
7. The Local Authority can rely upon the information obtained from those surveillance activities within Court proceedings.
8. This report gives details of RIPA applications that have been authorised during the periods 1 October 2018 until 31 December 2018 and the outcomes following surveillance.

Quarter 3 Activity

9. During Q3 there were three RIPA Directed Surveillance applications, two of which were authorised by the Court. The application which was refused is set out in further detail later in the report. During Q3 there was one CHIS application which was authorised by the Court.
10. The authorisations for Directed Surveillance which were granted related to an operation regarding the underage sales of alcohol within County Durham. This investigation is still active.
11. The authorisation for the CHIS related to an operation of the supply of counterfeit goods. The CHIS was used to communicate via social media with the seller, an order was placed for an item which was collected by the CHIS. The item was confirmed to be counterfeit. The seller attended an interview and confirmed that they had been selling counterfeit goods for a few months on a small scale. On completion of the investigation the decision was taken to offer a caution which was accepted. The CHIS authorisation was cancelled on 27 November 2018.
12. For information the comparison of authorisations granted for the previous year in the same quarter are as follows:

Period	CHIS authorisations	Directed Surveillance authorisations
Q3 2017/2018	3	4
Q3 2018/2019	1	2

Refused Application

13. On 18 October 2018, Durham County Council applied to the County Durham and Darlington Magistrates Court for authorisation for a CHIS and Directed Surveillance. The operation related to a Trading Standards investigation into the supply of counterfeit goods.
14. In considering the application for Directed Surveillance, the Judge referred to guidance which they had recently read and advised that such applications should only be authorised in cases where the crime is violent, involves substantial amounts of money, involves a large number of people and or is like to result in sentencing of three years or more. The Officer respectfully explained to the Court that the guidance referred to relates to Intrusive Surveillance (which Local Authorities are not permitted to undertake) rather than Directed Surveillance. However, the Judge refused the application for the following reasons:

“not proportionate – crime is not serious as defined as violent, including substantial money, a large number of people and or is likely to result in sentencing of three years or more.”
15. The Senior Responsible Officer reviewed the application in light of the refusal and remains satisfied that the application was necessary and proportionate. It is understood that the Judge was referring to the Revised Code of Practice “Covert surveillance and property interference code of practice”, which was published in September 2018. The revised Code of Practice makes no changes to the Directed Surveillance considerations. However, it does state that Intrusive Surveillance should only be authorised in relation to violent crime, cases involving substantial amounts of money or a large number of people or is likely to result in a sentencing of 3 years or more..
16. For information the linked CHIS application (referred to at paragraph 9? above) was authorised on the basis that the Judge was satisfied that there were reasonable grounds for believing that the requirements of the Act had been satisfied.

Background Papers

17. Further reading Covert surveillance and property interference code of practice can be found at:
<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>

Appendix 1: Implications

Legal Implications

The Council's objective is to make lawful and appropriate use of surveillance techniques where required whilst complying with the provisions of the Human Rights Act 1998 and in particular the provisions of Article 8 of the ECHR securing respect for an individual's (qualified) right to privacy. Quarterly oversight by the Board helps secure this objective.

Finance

None.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

None.

Human Rights

Use of investigatory powers potentially engages the Human Rights Act 1998 and in particular the qualified right to private and family life under article 8 of the European Convention. This right may only be interfered with in circumstances where it is necessary and proportionate to do so in pursuit of the public interest. Oversight by the Board of the Council's RIPA operations is designed to facilitate compliance with the Human Rights Act.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

An individual may complain to Investigatory Powers Tribunal that surveillance has been unlawful and if found to be unlawful could result in financial penalties and reputational damage.

Procurement

None.